

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS R. JONES,

Petitioner,

vs.

DIANE SABATKA-RINE,

Respondent.

8:21CV249

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion for Evidentiary Hearing filed on December 6, 2022. [Filing No. 44](#). Respondent filed a Brief in Response to Petitioner's motion on December 20, 2022. [Filing No. 45](#). Petitioner did not file a reply.

Petitioner moves the Court for an evidentiary hearing on claims 2 through 4 and claims 7 and 8 of his Amended Petition for a Writ of Habeas Corpus, [Filing No. 43](#). Respondent contends that Petitioner's motion should be denied as premature. [Filing No. 45](#).

Rule 8(a) of the *Rules Governing Section 2254 Cases in the United States District Courts* (hereinafter "Rules") provides, in relevant part, that in determining whether an evidentiary hearing is warranted, "the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7." In the Court's amended progression order entered September 22, 2022, Respondent was given 30 days after Petitioner filed an amended petition to file an answer and brief, with Petitioner's responsive brief and Respondent's reply brief to follow thereafter. [Filing No. 37 at 2](#). No answer has yet been filed, and Respondent has until January 6, 2023 to do

so. Thus, this Court cannot yet determine whether an evidentiary hearing is warranted under the Rules. Accordingly,

IT IS ORDERED that: Petitioner's Motion for Evidentiary Hearing, [Filing No. 44](#), is stayed pending receipt of Respondent's answer and until all briefing is completed.

Dated this 30th day of December, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Joseph F. Bataillon
Senior United States District Judge